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The Secretary
Ontario Securities Commission
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Submitted by email

Re Request For comments on Proposed Exempt Offerings Regime

Dear Mr. Stevenson:

The OSC deserves broad approval for the excellent first steps contained in the proposed changes in the exemption regime. We are delighted with the concept of requiring investors to acknowledge that they can lose all of the capital they invest. Based on experience it works.

During a CBC interview on Equity Crowd Funding, Neil Gross (FAIR) stated that an accompanying course of ongoing actions to educate investors is necessary. We concur. Our response provides suggestions on how this might be done through The Investor Education Fund. Our specific responses to questions that the OSC has raised are organized by exemption and question number for convenience.

Basis for Response

In making our assessment of the proposed changes in the Accredited Investor and Minimum Amount exemptions and introduction of The Crowd Funding, Offering Memorandum and Friends Family and Business Associates exemptions we held in mind their expected capital market impacts in respect of two criteria:

- change in availability of capital and the wealth creation result from capital deployed; and
- containment of deliberate misuse of capital raised amongst Canada's high potential growth rate firms - entrepreneurial issuers - in particularly at their early stages.

The latter is linked in our mind to an ongoing program of education for investors and issuers leading to a knowledgeable investor exemption who accept the burden of screening potential issuers and eliminate 95%. Insertion of the requirement under the Accredited Investor Exemption to acknowledge that the full amount invested can be lost, is a step in the direction of creating a group of knowledgeable investors.

The recent Conference Board Report, *Start Me Up: Funding Canada's Emerging Innovators,* provides strong support for the proposed AI change and underpins the need for an ongoing education program. The Board is reported to estimate that the demand for equity capital is between five to ten times its availability.

Start Me Up also expresses the point of view that a great barrier to capital for early stage high potential firms is that, " … risk capital is going to be mostly interested in your ability to run a business,". Increased allocation of capital to early stage high potential opportunities requires improvements in the knowledge and skills of those active in supplying capital to early stage high potential opportunities and those wishing to access it to build organizations able to deploy capital productively. Angel investors are increasingly aware of what is demanded of entrepreneurs seeking to enter the global marketplace with new products and create wealth as a result. A program of investor education will set standards for the entrepreneurial community in seeking funds. Appropriate use of exemptions will increase the number of those able to provide what has been labeled, smart money.

In regard of a continuing program of investor education it will be greatly assisted by changes now under way in the entrepreneurial community. No longer is a new entrant seen as a miniature of a large one. Doing so is as fallacious as seeing a three year old child as a miniature adult and leads to equally erroneous treatment. One implication is that business plans are often inappropriate at the earliest stages because the entire use of funds is premised on testing identified but untested assumptions.

Building on the proposed changes in prospectus exemptions our general and specific recommendations seek to provide suggestions for improving Canada's capital supplying infrastructure over the next decade.

Exempt Market and Early Stage High Potential Opportunities

Meeting the economy's need for allocating capital to issuers with the capability to commercialize innovation will require the use of exemptions from the demands that have evolved in the context of organizations with track records. We noted that their suitability for such use with the latter is an open question at this time. Major differences exist between established firms and high potential new entrant organizations in market places that a new.

We thus revisit the key principal of access to other peoples' money, disclosure, to establish a basis for exemptions suitable to their needs which would serve investors well. Regardless of the mechanism used, the guiding concept for access to other people's money stated in the context of issuing securities is, "full, true and plain disclosure of all material facts" , relating to

the securities to be distributed. The *gold* standard is called a prospectus, ".. a formal legal document that provides details about an investment – the facts an investor needs to make an informed investment decision." When met in the opinion of a securities regulator, those seeking capital are permitted to make the general public aware of the opportunity to invest. Over the past eighty plus years, transaction costs associated with use of the gold standard have resulted in exemptions to the use of a prospectus, including the Offering Memorandum. This de facto recognition should be continued but its implementation altered to meet the reality of early stage investing.

Determination of what are the material facts is a crucial but oft neglected and difficult issue in many contexts of obtaining other people's money, particularly when the entire business is at an early stage of its entry in to a competitive world. The Conference Board's report brings to the fore that for early stage firms, management's capability to use the money obtained is a material fact, if not the key material fact. The old adage that *good people produce good numbers* while helpful in providing a sense of direction is not sufficient. Regardless of the specific exemption used, where there is no track record of accomplishment by the issuer which can be assessed in respect of the opportunity presented to investors, omission of objective third party assessment of the capabilities of those seeking funds is failure to disclose all material facts. In our view the gold standard in such instances rests upon:

a) an independent assessment the opportunities. For early stage technology companies it has existed and been applied for two decades – it was used by RIM - and has an eighty percent success rate in its predictions. {Such information can be produced by issuers at less than three percent of the gross proceeds of an offering of $500,000.}; and
b) profiles of the individual members of the executive suite and board members to provide insight into their capability as individuals and as a team to perform the work required to use the proceeds. Such profiles are also available at modest cost from highly qualified well established suppliers This goes beyond the resume which should be available and contain the entire education and work histories. Are not issuers in reality being hired as money managers?

Taking into account best practices in starting a business to pursue a high potential opportunity linked to the gold standard set out above, the program FAIR recognized as being needed has a clear point of departure. It needs only a vehicle to insert them into securities practices, which we suggest be the Offering Memorandum as used by early stage high potential firms.

Overall Responses

We agree with the stated view of Costs and Benefits in respect of the set of proposed changes. We expect more capital to be available from more individual sources in the $250,000 to $750,000 range typically obtained by entrepreneurial initial issuers from the angel community. When the needs of the opportunity appear to require it, increasing the amount with use of the Equity Crowdfunding Exemption will be beneficial. The risk of satisficing and taking what is available will reduce the attendant danger of running out of funds slightly short of the finish line. Were wealth creation results to be that four of a portfolio of twenty investments provided an IRR of 30% on the portfolio, a not unreasonable expectation given the facts of early stage investments by knowledgeable investors, Ontario and Canada will be well served by the proposed package of proposed exemptions.

No "invitations" to use the exemptions by issuers for purposes other than to create wealth were apparent to us. Nonetheless, as with taxation there are always a handful, 2-5%, who when offered a choice between an honest and dishonest path will choose the latter. While the amounts are modest and lessen the incentives for the dishonest to indulge their proclivity to ply their "skills", a combination of rapid detection and equally rapid sanctions plus investor and issuer education are still necessary to contain abuse. The difficulty will be to distinguish ineptness and bad luck in the application of funds from deft theft. Suggestions for issuer and investor education are made to create a cadre of investors able to shine light on gray zones where the 2 to 5% like operate.

A final general response, the proposed introduction of investor risk acknowledgement of loss of capital is excellent.. It will screen out the psychologically unsuited. It will protect issuers from unsuitable investors by putting a brake on excessive investor optimism even when the amount is small. We anticipate that it will place an effective curb on inducements by the nefarious and actual attempts to game the intent of the proposed exemptions. Based upon our experience with the type of wording, it will prove to be a wise provision and should allow Canada to match the fraud free Australian experience.

RESPONSE BY EXEMPTION AND QUESTION

ACCREDITED INVESTOR EXEMPTION

We draw to the attention of the members of the Canadian Securities Administrators the use of the concepts and definition of AI by the Federal Government to determine membership eligibility for the angel groups they support. While understandable, this use bars people who can add value based to bringing to profitable fruition the potential of these opportunities based upon their skills and experience. Funds are in short supply in view of the Conference Board. The long term impact of its continued use in its present form will be to unnecessarily limit the number of individuals able to make a substantive contribution to the development of early stage high potential firms we so urgently require. Limiting the number of those who can smart

money to high potential opportunities on the basis that they are wealthy enough to afford the loss of capital is not in accord with the needs of Ontario's and Canada's economy. Doing so on the basis they do not have the knowledge to understand the risk is wiser and feasible within the context of membership in the angel community either as a member of an angel group or as an individual member of NACO. Both offer access to the best available peer advice on best practices.

Immediate action appears possible. The OSC has internal mechanisms to ascertain whether or not relief is to be granted from its provisions upon application. Under National Instruments 45-106 Part 1: Definitions and Interpretation / Definitions "accredited investor" (v) provision exists for an individual to be granted relief in respect of their ability to assess the risks of investments, irrespective of an individual's financial capacity exemption. It has been used once successfully. We urge that membership in a recognized angel organization conditional on approval of the OSC be grounds for de facto relief under (v) so that the individual is recognized as an accredited investor so long as the person remains a member in good standing of an angel group. It would be most helpful if the Federal Government, Fed Dev in particular, were to be made aware of the provision and thus eliminate a perhaps inadvertent barrier to increasing the supply of smart money to high potential organizations.

Specific Response.

We concur that to increase the amounts used to define an accredited investor under AI Exemption would be to risk reduction of the supply of capital to early stage firms from angel investors knowledgeable of the fact that the odds of loss of capital are fifty percent in any such investment.

Introduction of risk acknowledgement is sound going part way to transforming the AI Exemption into one used by knowledgeable investors such as angels. This remark is based upon the OSC's observation that those using the exemption typically invested in the $25,000 to $30,000 range, the typical amounts for angel investors.

We would be pleased to see this concept extended within the AI Exemption by inclusion of the fact that the odds are fifty-fifty on loss of the sum invested in early stage firms when following best practices in the angel community. Based upon more than thirty years of experience of raising capital for high potential ventures and deploying it, we found that the statement that all capital could be lost screened out investors who do not have the stomach for significant

loss of capital at the transaction level, regardless of their ability to sustain the loss involved, no matter how modest.

We urge that the conceptual basis of this exemption be altered to transform it into a knowledgeable investor exemption with the intent of increasing the number of those able to make investments to provide smart money and thus improving Ontario's and Canada's supply of capital for early stage high potential opportunities. We also suggest use of the proposed OM Exemption to make continued progress in expanding the number of suppliers of *smart* capital.

OFFERING MEMORANDUM EXEMPTION

We anticipate the technological developments giving rise to crowd funding for early stage high potential opportunities, including Equity Crowd Funding, will continue to diffuse worldwide. Hence we view this exemption as providing a basis for needed testing of how Ontarians and all Canadians could deploy these developments to our competitive advantage. In our view the evolution of the prospectus is akin to that of the Income Tax Act: both have arrived at a point where they are beyond practical comprehension and the proposed change plus creative use of technology holds out possibilities for securities regulators to increase both investor protection and capital availability in an increasingly litigious society.

General (1) What else could we do to make the OM Prospectus Exemption a useful financing tool for start-ups and SMEs?

Response. The OM exemption has the potential to become an important contributor to access to capital for start-ups and other high potential SME's. There are two provisos to be applied to such use.

The first is that the contents of the Offering Memorandum for early stage firm should replace the business plan because of it's over emphasis on projected financials but include:

- a third party assessment of the opportunity and managements response to its observations;
- a business model that is to be funded and identification of the key assumptions to be tested and monitored via a dashboard;

- profiles of the type that would be used in recruitment of staff by well managed profit making organizations having a sustained track record for the members of the executive suite, board members, and key team members; and
- a discussion of how the new entrant organization has allocated the necessary tasks and supporting budgets based on the proceeds.

The second proviso is that the risk acknowledgment wording make clear that only outright misrepresentations akin to falsifying a resume constitute grounds for rescission and that based upon experience the odds of getting a return of capital and costs from those responsible are low and that should be expected in such investments.

In the absence of specific interest in use of the Offering Memorandum Exemption and a significant reduction in transaction costs, we do not believe its use will be widespread initially.

Response We would urge a special projects collaborative approach be made available on a case by case basis to those seeking to use the OM up to a limit of say a dozen cases over the next two years. This should be done in concert with related IEF investor education activities. Testing of the results on the general public should be done as it has in the past by use of Web based advertisements incorporating the risk of total loss and the odds of fifty –fifty on any transaction and need to make twenty such investments. This would allow production of estimates of changes in the potential supply of such capital, a needed suggested by the Conference Board report, Start Me Up.

Issuer qualification criteria

2) We have concerns with permitting non-reporting issuers to raise an unlimited amount of capital in reliance on the OM Prospectus Exemption. Should we impose a cap or limit on the amount that a non-reporting issuer can raise under the exemption? If so, what should that limit be and for what period of time? For example, should there be a "lifetime" limit or a limit for a specific period of time, such as a calendar year?

Response. Subject to the above provisos no limit should be imposed. Doubts about the actual degree of protection provided investors by a prospectus support this logic.

(3.3) What type of issuer is most likely to use the OM Prospectus Exemption to raise capital? Should we vary the requirements of the OM Prospectus Exemption to be different (for

example, disclosure requirements) depending on the issuer's industry, such as real estate or mining?

Response. (a) Given its prospectus like demands and the fear of litigation, only well known and understood sectors such as real estate are likely to make use of it in its current form. Initially it will be used for follow-on investments by those organizations who have demonstrated significant progress against previously established milestones and who wish to remain a non traded entity for some years to further their development.

(b) Yes vary the requirements. Addition of a category for new entrants, new industries, and estimated size of the opportunity to encourage high potential new entrants to use should be pilot tested.

4) We have identified certain concerns with the sale of real estate securities by non-reporting issuers in the exempt market. As phase two of the Exempt Market Review, we propose to develop tailored disclosure requirements for these types of issuers. Is this timing appropriate or should we consider including tailored disclosure requirements concurrently with the introduction of the OM Prospectus Exemption in Ontario?

Response The timing is appropriate.

Types of securities

5) We are proposing to specify types of securities that may not be distributed under the OM Prospectus Exemption, rather than limit the distribution of securities to a defined group of permitted securities. Do you agree with this approach? Should we exclude other types of securities as well?

Response Yes. Attempts to define will fail. Exclusion raises a question, is a stream of royalty payments conditional upon sales performance a security? It is a contract but not a loan. However counsel will advise it is a security even when there are no shares issued. Clarity on this point would increase the effective financing mechanisms available to an improtant but neglected subset of high potential firms those who do not need or wish to become traded.

6) Specified derivatives and structured finance products cannot be distributed under the OM Prospectus Exemption. Should we exclude other types of securities in order to prevent complex and/or novel securities being sold without the full protections afforded by a prospectus?

Response. Is a royalty on sales contract "novel" and thus would be included in the prohibition? Exclusion would inhibit capital formation for early stage high potential opportunities wishing to be non-traded entities but not sell the business as the means for investor exit.

Offering parameters

7) We have not proposed any limits on the length of time an OM offering can remain open. This aligns with the current OM Prospectus Exemption available in other jurisdictions. Should there be a limit on the offering period? How long does an OM distribution need to stay open? Is there a risk that "stale-dated" disclosure will be provided to investors?

Response No limit needed at this time for early stage high potential opportunities

Registrants

8) Do you agree with our proposal to prohibit registrants that are "related" to the issuer (as defined in National Instrument 33-105 *Underwriting Conflicts*) from participating in an OM distribution? We have significant investor protection concerns about the activities of some EMDs that distribute securities of "related" issuers. How would this restriction affect the ability of start-ups and SMEs to raise capital?

Response The restriction should not have an impact on the majority of such issuers.

9) Concerns have been raised about the role of unregistered finders in identifying investors of securities. Should we prohibit the payment of a commission or finder's fee to any person, other than a registered dealer, in connection with a distribution, as certain other jurisdictions have done? What role do finders play in the exempt market? What purposes do these commissions or fees serve and what are the risks associated with permitting them? If we restrict these commissions or fees, what impact would that have on capital raising?

Response. The scarcest resource of these issuers is management time. Cash is a close second, sometimes first. Contingent payment resolves both issues and provides a good alignment of incentives and is a common practice. Failure to permit contingent payments would simply add to the burden of entrepreneurs. Upfront payments, however, do offer the opportunity for the unscrupulous too scam entrepreneurs and have been a favorite of those individuals seeking to take advantage of entrepreneurs, including even experienced ones.

Investor qualifications -- definition of eligible investor

10) We have proposed changing the $400,000 net asset test for individual eligible investors so that the value of the individual's primary residence is excluded, and the threshold is reduced to $250,000. We have concerns that permitting individuals to include the value of their primary residence in determining net assets may result in investors qualifying as eligible investors based on the relatively illiquid value of their home. This may put these investors at risk, particularly if they do not have other assets. Do you agree with excluding the value of the investor's primary residence from the net asset test? Do you agree with lowering the threshold as proposed?

Response. In the context of the risk acknowledgement form, the wording could be modified to state that unless the mortgage was less than 25% of the current assessed value of their house, it could not be included in the net asset test.

The threshold should be lowered with the proviso set out above. This would maintain the balance sought by the set of exemptions of increasing the number of sources of capital.

11) An investor may qualify as an eligible investor by obtaining advice from an eligibility advisor that is a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). Is this an appropriate basis for an investor to qualify as an eligible investor? Should the category of registrants qualified to act as an eligibility advisor be expanded to include EMDs?

Response. The basis is not appropriate for high potential early stage investment opportunities. No class of eligible advisors exists. Expansion to include EMD's in the absence of proven expertise in due diligence high potential firms would not provide investors sufficient protection. EMD's supported by such expertise as demonstrated by experience recognized within the angel community should be introduced on a pilot basis.

Investment limits

12) Do you support the proposed investment limits on the amounts that individual investors can invest under the OM Prospectus Exemption? In our view, limits on both eligible and non-eligible investors are appropriate to limit the amount of money that retail investors invest in the exempt market. Are the proposed investment limits appropriate?

Response. Given the proposed wording on risk of loss of all capital imposition of limits is not warranted at this time.

In respect of early stage high potential new entrant firms we suggest that that the OSC include on the form that half of such transactions lose all capital and that investors should be prepared to make twenty investments of the amount they are contemplating over a five year period to have a reasonable expectation of a positive return. The wording suggested should be part of the risk acknowledgment process when the OM Exemption is used for such firms.

Point of sale disclosure

13) Current OM disclosure requirements do not contain specific requirements for blind pool issuers. Would blind pool issuers use the OM Prospectus Exemption? Would disclosure specific to a blind pool offering be useful to investors?

Response Yes and Yes

14) We are not considering any significant changes to the OM form at this time. However, we are aware that many OMs are lengthy, prospectus-like documents. Are there other tools we could use at this time (short of redesigning the form) to encourage OMs to be drafted in a manner that is clear and concise?

Response Yes. See above under Offering Memorandum

Advertising and marketing materials

15) In our view any marketing materials used by issuers relying on the OM Prospectus Exemption should be consistent with the disclosure in the OM. We have proposed requiring that marketing materials be incorporated by reference into the OM (with the result that liability would attach to the marketing materials). Do you agree with this requirement?

Response Yes, with a caveat. Liability should be associated with clear intent to use the marketing and sale material to deceive. Such evidence would be absence of the wording of the risk of loss of capital and requirement to acknowledge it by the investor in the marketing materials.

Ongoing information available to investors

16) Do you support requiring some form of ongoing disclosure for issuers that have used the OM Prospectus Exemption, such as the proposed requirement for annual financial statements? In our view, this type of disclosure will provide a level of accountability. Should the annual financial statements be audited over a certain threshold amount? If the aggregate amount raised is $500,000 or less, is a review of financial statements adequate?

Response. It is common practice for angel investors to specify the level of reporting required. It is often quarterly and plus annual statements as submitted to the tax authorities. Audited ones are not required in the early years for amounts of less than $1.5 M. instead a controller with a professional designation such as CMA or CGA is a requirement of funding. We suggest that in lieu of specific amounts, items such as cash flow statements, a dashboard of critical factors and rolling quarterly cash flow forecasts produced and signed off on by Controller are more informative.

17) We have proposed that non-reporting issuers that use the OM Prospectus Exemption must notify security holders of certain specified events, within 10 days of the occurrence of the event. We consider these events to be significant matters that security holders should be notified of. Do you agree with the list of events?

Response For early stage high potential and rapidly growing firms, key executive changes and the reasons are critical as are decisions to change the business model, cash availability expressed as days before we run out of cash on hand plus number of payrolls that can be met with cash on hand as well as commencement of legal actions of any kind. Specifically include: (a) a Notice of Intent to Make a Proposal under the Bankruptcy Insolvency Act or notice of intent to use the CCAA or a demand letter from any secured debtor.

We agree with the following:

- a fundamental change in, or discontinuation of, the issuer's business,
- a significant change to the issuer's capital structure,
- a major reorganization, amalgamation or merger
- a take-over bid or issuer bid involving the issuer,
- a significant acquisition, and
- changes in its directors and executive officers.

We also agree with the obligations of a non-reporting issuer in respect of the OSC as set out.

18) Is there other disclosure that would also be useful to investors on an ongoing basis?

Response See above

19) We propose requiring that non-reporting issuers that use the OM Prospectus Exemption must continue to provide the specified ongoing disclosure to investors until the issuer either becomes a reporting issuer or the issuer ceases to carry on business. Do you agree that a non-reporting issuer should continue to provide ongoing disclosure until either of these events occurs? Are there other events that would warrant expiration of the disclosure requirements?

Response Continued provision of cash position and cash quarterly outlook are the only essential items.

Reporting of distribution

20) We believe that it is important to obtain additional information to assist in monitoring compliance with and use of the OM Prospectus Exemption. Form 45-106F11 would require disclosure of the category of "eligible investor" that each investor falls under. This additional information is provided in a confidential schedule to Form 45-106F11 and would not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

Response Yes, provided there is an annual report issued showing raw numbers of investors, total amounts by category linked to category of issuer.

MINIMUM AMOUNT EXEMPTION

We support its restriction to institutional investors for the reasons set forth in the request for comment.

FFBA EXEMPTION

Types of securities

1) Do you agree with our proposal to limit the types of securities that can be distributed under the FFBA Prospectus Exemption to preclude novel and complex securities? Do you agree with the proposed list of permitted securities?

Response. No unless the OSC is prepared to state that a common form of return of capital and return of capital royalty payments are not securities. We would support the list provided the OSC were to include royalty payments as a permitted security even though no shares or debt were issued. Based upon experience counsel often assert that such payments are securities given the definition of security used by the OSC.

Offering parameters

2) Should there be an overall limit on the amount of capital that can be raised by an issuer under the FFBA Prospectus Exemption?

Response No.

Investor qualifications

3) Do you agree with the revised guidance in sections 2.7 and 2.8 of 45-106CP regarding the meaning of "close personal friend" and "close business associate"? Is there other guidance that could be provided regarding the meaning of these terms?

Response No comment

Investment limits

4) Should there be limits on the size of each investment made by an individual under the FFBA Prospectus Exemption or an annual limit on the amount that can be invested?

Response Not at this time.

Risk acknowledgement form

5) Does the use of a risk acknowledgement form that is required to be signed by both the investor and the person at the issuer with whom the investor has the relationship mitigate against potential risks associated with improper reliance on the FFBA Prospectus Exemption?

Response Yes.

In addition we would add a requirement that annual statements plus income tax returns, annual corporate filings and GST are provided to the investor as a condition of use of the FFBA exemption.

Reporting of distribution

6) We believe it is important to obtain additional information in Form 45-106F11 to assist in monitoring compliance with and use of the FFBA Prospectus Exemption. Form 45-106F11 would require disclosure of the person at the issuer with whom the investor has a relationship.

This additional information is provided in a schedule to Form 45-106F11 that does not appear on the public record. Do you agree that collecting this information would be useful and appropriate?

Response Yes

Existing Security Holder Prospectus Exemption

No comment

Crowdfunding Prospectus Exemption

Issuer qualification criteria

1) Should the availability of the Crowdfunding Prospectus Exemption be restricted to non-reporting issuers?

Response No. To do so would prevent firms now internally capable of grasping high potential opportunities but otherwise constrained by lack of capital from doing so and drive them into an exercise of attempting to become a non reporting issuer.

2) Is the proposed exclusion of real estate issuers that are not reporting issuers appropriate?

Response Yes.

3) The Crowdfunding Prospectus Exemption would require that a majority of the issuer's directors be resident in Canada. One of the key objectives of our crowdfunding initiative is to facilitate capital raising for Canadian issuers. We also think this requirement would reduce the risk to investors. Would this requirement be appropriate and consistent with these objectives?

Response. A more nuanced approach would be more appropriate and consistent and relief provisions should be available based upon the issuer's need for competence on the Board. See the Report on Nortel issued by the Telfer School of Management for insight into the requirements of board members of firms in markets in transition which are close to those of high potential firms.

Offering parameters

4) The Crowdfunding Prospectus Exemption would impose a $1.5 million limit on the amount that can be raised under the exemption by the issuer, an affiliate of the issuer, and an issuer

engaged in a common enterprise with the issuer or with an affiliate of the issuer, during the period commencing 12 months prior to the issuer's current offering. Is $1.5 million an appropriate limit? Should amounts raised by an affiliate of the issuer or an issuer engaged in a common enterprise with the issuer or with an affiliate of the issuer be subject to the limit? Is the 12 month period prior to the issuer's current offering an appropriate period of time to which the limit should apply?

Response. We support the limit as stated as a good point of departure. Systematic attention to its impact in practice should be undertaken, in particular its use with the AI Exemption by angels and the OM Exemption modified for use of high potential early stage firms.

5) Should an issuer be able to extend the length of time a distribution could remain open if subscriptions have not been received for the minimum offering? If so, should this be tied to a minimum percentage of the target offering being achieved?

Response Yes. Given the time demands on the management of such issuers a tiered response of extensions should be used. To illustrate under 10%, no extension; under 50%, an additional period equal to the original; etc., and multiple extensions should be allowed.

Restrictions on solicitation and advertising

6) Are the proposed restrictions on general solicitation and advertising appropriate?

Response. When combined with a 90 day offering period and the requirement for equal terms across exemptions, the issuers' objectives of raising capital is thwarted as is the OSC's stated objective in introducing the exemption. Based on our experiences over thirty years in the capital markets for early stage high potential firms, those willing to invest are relatively few and far between. It often takes six months to complete a transaction. Widespread and prolonged efforts to reach the hardy few and exchange the information sought are required. While lessened by the advent of technology, lags persist. This leads to the pernicious effect of deliberate under estimation of the amount needed by issuers, given that each party is expected to invest about $25,000.

Rather than introduce restrictions we suggest that the balance between making more capital available from more sources and protecting investors, it will prove more effective to require that all general solicitation and advertising efforts make clear on the page describing the opportunity that the odds are fifty-fifty that all capital will be lost and that a portfolio of twenty such investments is required to have reasonable prospects of a positive return of capital. The chilling effect of being told that one can lose all capital proved to be an excellent means of protecting investors from undue enthusiasm.

Investment limits

7) The Crowdfunding Prospectus Exemption would prohibit an investor from investing more than $2,500 in a single investment under the exemption and more than $10,000 in total under the exemption in a calendar year. An accredited investor can invest an unlimited amount in an issuer under the AI Exemption. Should there be separate investment limits for accredited investors who invest through the portal?

Response. The AI Exemption is based upon a long standing conceptual error which has come to be erroneously associated with knowledge. Introduction of the risk of loss of capital will accomplish the aims of investor protection when the AI Exemption is used.

In support of our response given that the typical amount invested is in the low five figures, $30,000, a satisfactory correlation between knowledge and investment amount is apparent. Widespread dissemination of the amount and its distribution accompanied by ongoing reporting of it by the OSC as a prelude to transforming the basis of the AI Exemption into a knowledgeable investor exemption would be beneficial for the capital markets. The alternative or complement would be use of the OM Exemption as described earlier.

Statutory or contractual rights in the event of a misrepresentation

8) The Crowdfunding Prospectus Exemption would require that, if a comparable right were not provided by the securities legislation of the jurisdiction in which the investor resides, the issuer must provide the investor with a contractual right of action for rescission or damages if there is a misrepresentation in any written or other materials made available to the investor (including video). Is this the appropriate standard of liability? What impact would this standard of liability have on the length and complexity of offering documents?

Response. Measured by the prospect of return of capital after costs of exercise, the standard of liability imposed is irrelevant in our view. In the most egregious cases it would be a more effective deterrent to have the OSC allege fraud and bear the costs of its pursuit in the Courts regardless of jurisdiction. The Australian experience suggests that prevention can be very effective. Is it not an instance of much ado about nothing and therefor no cost is justified in the production of any given transaction document.

Provision of ongoing disclosure

9) How should the disclosure documents best be made accessible to investors? To whom should the documents be made accessible?

Response Yes, via the Portal.

10) Would it be appropriate to require that all non-reporting issuers provide financial statements that are either audited or reviewed by an independent public accounting firm? Are financial statements without this level of assurance adequate for investors? Would an audit or review be too costly for non-reporting issuers?

Response. It is standard practice in the angel community to receive ongoing documents from issuers. It is also common to require a qualified CGA or CMA to supervise the accounting function, certify that the employee remittances are in good standing at least monthly, post the certification on a secure portion of the issuers web site and provide the annual statements filed with CRA. This would be more effective than an audit in protecting investor's interests.

11) The proposed financial threshold to determine whether financial statements are required to be audited is based on the amount of capital raised by the issuer and the amount it has expended. Are these appropriate parameters on which to base the financial reporting requirements? Is the dollar amount specified for each parameter appropriate?

Response No and No.

Other

12) Are there other requirements that should be imposed to protect investors?

Response. Not at this time. But the OSC should support and monitor the evolvement of standard practices needed to cope with the unique issues involved when investing in early stage firms. These include the fact they are not likely executing a proven business model based upon a well-defined business plan.

Crowdfunding Portal Requirements

General registrant obligations

13) The Crowdfunding Portal Requirements provide that portals will be subject to a minimum net capital requirement of $50,000 and a fidelity bond insurance requirement of at least $50,000. The fidelity bond is intended to protect against the loss of investor funds if, for example, a portal or any of its officers or directors breach the prohibitions on holding, managing, possessing or otherwise handling investor funds or securities. Are these proposed insurance and minimum net capital amounts appropriate?

No comment

Additional portal obligations

14) Do you think an international background check should be required to be performed by the portal on issuers, directors, executive officers, promoters and control persons to verify the qualifications, reputation and track record of the parties involved in the offering?

Response Yes. Add a requirement to identify the "controlling mind."

Prohibited activities

15) The Crowdfunding Portal Requirements would allow portal fees to be paid in securities of the issuer so long as the portal's investment in the issuer does not exceed 10%. Is the investment threshold appropriate? In light of the potential conflicts of interest from the portal's ownership of an issuer, should portals be prohibited from receiving fees in the form of securities?

Response. Yes.

No prohibition is needed if the portal elects not to receive income from the issuer for its services nor income from other suppliers to the issuer until investors do, the resulting alignment of interests would be to the benefit of investors.

16) The Crowdfunding Portal Requirements restrict portals from holding, handling or dealing with client funds. Is this requirement appropriate? How will this impact the portal's business operations? Should alternatives be considered?

Response No Comment

Other

17) Are there other requirements that should be imposed on portals to protect the interests of investors?

Response No Comment

18) Will the regulatory framework applicable to portals permit a portal to appropriately carry on business?

Response. It would be useful to inquire into how GUST and AngelList earn income. The former provides services to the accredited investor capital market for both angels and angel groups as well as issuers, entrepreneurs seeking funds from those groups.

ACTIVITY FEES

No Comment